

AG Contract No KR03-0145TRN
ADOT ECS File No. JPA 02-52 Amendment 1
TRACS No.: H5867 01C
Section: SR-177 @ (M P. 146),
Item No.: 75304
Project: Kearny Rail & Copper Park
Landscape Enhancements

INTERGOVERNMENTAL AGREEMENT

BETWEEN
THE STATE OF ARIZONA
AND
THE TOWN OF KEARNY

THIS AMENDMENT, entered into 09 September, 2003 **Amendment Number 1** to JPA 02-052, AG Contract No.: KR03-0145TRN, filed with the Secretary of State under No. 26119, pursuant to Arizona Revised Statutes Sections 11-951 through 11-954, as amended between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "State") and the TOWN OF KEARNY, acting by and through its Mayor and Town Council (the "Town").

I. RECITALS

1. The State is empowered by Arizona Revised Statutes Section 28-401 to enter into this agreement and has delegated to the undersigned the authority to execute this agreement on behalf of the State.

2. The Town is empowered by Arizona Revised Statutes Section 9-240 to enter into this agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this agreement and has authorized the undersigned to execute this agreement on behalf of the Town.

3. The Town has selected such project within the boundary of the Town; the survey of the project has been completed; and, as required, submitted to the Federal Highway Administration (FHWA) for its approval.

4. The only interest of the State in the project is in the acquisition of federal funds for the use and benefit of the Town by reason of federal law and regulations under which funds for the project are authorized to be expended.

The parties agree to amend the above referenced Agreement to clarify the responsibilities of the parties funding source under Recital paragraph 5. and Scope of Work, Article II.1 e. Change Arizona Revised Statutes Section 48-572, in the Recitals paragraph 2 to Arizona Revised Statutes Section 9-240, and include the Non-Availability of Funds and the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101-12213) to this agreement under the Miscellaneous Provisions, Article III.

NO. 26119
Filed with the Secretary of State
Date Filed: 09/09/03

Janice K. Brewer
Secretary of State

By: Timothy J. Haernewald

THEREFORE THE AGREEMENT IS AMENDED AS FOLLOWS:

The following language shall replace Recital 5.

5. The work embraced by this agreement currently estimated at \$488,000.00 funded by the State and Federal Aid as follows:

Construction of a multi-use concrete pathway, landscaping, irrigation, pedestrian lighting, three interpretive kiosks and a ramada.

II. SCOPE OF WORK

The following language shall replace Article II.1.e.:

e. After Town concurrence of the plans, the Project will be constructed by the State, using State and Federal funds, in an amount estimated at \$488,000.00.

Article III. 8 & 9 has been added to the following language:

8. This agreement is subject to all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable federal regulations under the Act, including 28 CFR Parts 35 and 36. The parties to this agreement shall comply with Executive Order Number 99-4 issued by the Governor of the State of Arizona and incorporated herein by reference regarding "Non-Discrimination".

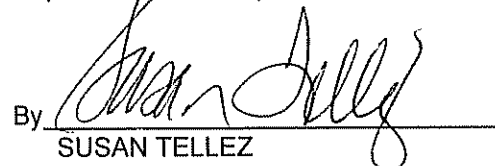
9. Non-Availability of Funds: Every payment obligation of the State under this contract is conditioned upon the availability of funds appropriated or allocated for the payment of such obligation. If funds are not allocated and available for the continuance of this contract, this contract may be terminated by the State at the end of the period for which the funds are available. No liability shall accrue to the State in the event this provision is exercised, and the State shall not be obligated or liable for any future payments or for any damages as a result of termination under this paragraph.

IN WITNESS WHEREOF, the parties have executed this agreement the day and year first above written.

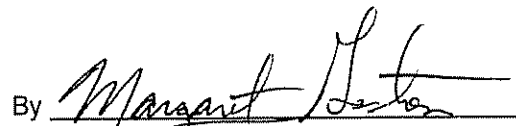
TOWN OF KEARNY

By 
DEBRA SOMMERS
Mayor

STATE OF ARIZONA
Department of Transportation

By 
SUSAN TELLEZ
Contract Administrator

ATTEST

By 
MARGARET GASTON
City Clerk

G:02-052-ENVIR-Kearny-TE04
August 5 2003-JW

RESOLUTION 03-517

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE TOWN OF KEARNY, ARIZONA, AUTHORIZING AN AMENDMENT TO AN INTERGOVERNMENTAL AGREEMENT WITH THE STATE OF ARIZONA TO IMPLEMENT THE KEARNY RAIL AND COPPER PARK LANDSCAPE ENHANCEMENT.

WHEREAS, the Town of Kearny is empowered by Arizona Revised Statutes to enter into an intergovernmental agreement, and

WHEREAS, the Arizona Department of Transportation established the landscape enhancement grant program, and

WHEREAS, the Town of Kearny has previously approved an intergovernmental agreement with the Arizona Department of Transportation for this grant program, and

WHEREAS, it is necessary to amend the existing agreement.

NOW, THEREFORE, BE IT HEREBY RESOLVED by the Mayor and Council of the Town of Kearny, Arizona, that

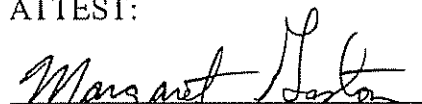
Section 1: The Mayor and Town Manager, acting on behalf of the Town of Kearny are hereby authorized to negotiate, enter into, execute and deliver the intergovernmental agreement amendment with the Arizona Department of Transportation implementing the Kearny Rail and Copper Park landscape enhancements.

Section 2: The resolution shall take effect immediately upon it's adoption and approval.

PASSED AND ADOPTED by the Mayor and Council of the Town of Kearny, Arizona, this 11th day of August, 2003.


Debra Sommers, Mayor

ATTEST:

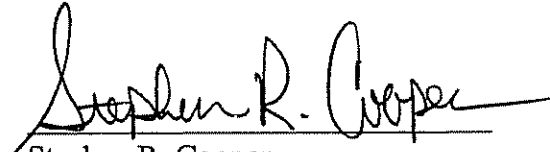

Margaret Gaston, Town Clerk

Resolution No. 03-517

Page 2

August 11, 2003

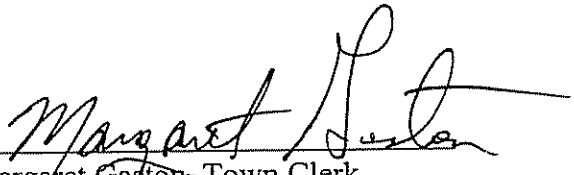
APPROVED AS TO FORM:



Stephen R. Cooper

I, the undersigned, Margaret Gaston, being the duly appointed and qualified Town Clerk of the Town of Kearny, Arizona, certify that the foregoing Resolution No. 03- 517 is a true, correct and accurate copy of Resolution No. 03-517, passed and adopted at a regular meeting of the Kearny Town Council, held on August 11, 2003, at which a quorum was present and voted in favor of said Resolution.

Given under my hand and seal this 19th day of August 2003.


Margaret Gaston, Town Clerk

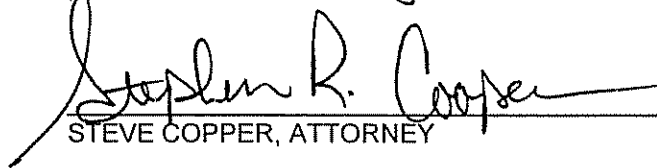


APPROVAL OF THE TOWN OF KEARNY ATTORNEY

I have reviewed the above referenced proposed intergovernmental agreement, between the DEPARTMENT OF TRANSPORTATION, INTERMODAL TRANSPORTATION DIVISION and the TOWN OF KEARNY, is an agreement among public agencies which has been reviewed pursuant to A.R.S section 11-951 through 11-954 and declare this agreement to be in proper form and within the powers and authority granted to the Town under the laws of the State of Arizona. No opinion is expressed as to the authority of the State to enter into this agreement

Approved to Form:

DATED this 18th day of August 2003.



STEVE COPPER, ATTORNEY



OFFICE OF THE ATTORNEY GENERAL
STATE OF ARIZONA

TERRY GODDARD
ATTORNEY GENERAL

CIVIL DIVISION
TRANSPORTATION SECTION
WRITER'S DIRECT LINE 602.542.8855

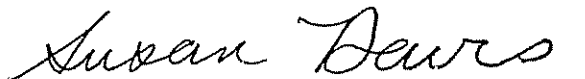
INTERGOVERNMENTAL AGREEMENT
DETERMINATION

A.G. Contract No. KR03-0145TRN (JPA 02-52 Amendment 1), an Agreement between public agencies, has been reviewed pursuant to A.R.S. § 11-952, as amended, by the Undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining Parties, other than the State or its agencies, to enter into said Agreement.

DATED September 2, 2003.

TERRY GODDARD
Attorney General


SUSAN E. DAVIS
Assistant Attorney General
Transportation Section

/ss

att.

INTERGOVERNMENTAL AGREEMENT

BETWEEN
THE STATE OF ARIZONA
AND
THE TOWN OF KEARNY

THIS AGREEMENT is entered into June 25, 2003 pursuant to Arizona Revised Statutes Sections 11-951 through 11-954, as amended between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "State") and the TOWN OF KEARNY, acting by and through its Mayor and City Council (the "Town")

I. RECITALS

1. The State is empowered by Arizona Revised Statutes Section 28-401 to enter into this agreement and has delegated to the undersigned the authority to execute this agreement on behalf of the State
 2. The Town is empowered by Arizona Revised Statutes Section 48-572 to enter into this agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this agreement and has authorized the undersigned to execute this agreement on behalf of the Town
 3. The Town has selected such project within the boundary of the Town; the survey of the project has been completed; and, as required, submitted to the Federal Highway Administration (FHWA) for its approval.
 4. The only interest of the State in the project is in the acquisition of federal funds for the use and benefit of the Town by reason of federal law and regulations under which funds for the project are authorized to be expended.
-

NO. 26119
Filed with the Secretary of State
Date Filed: 06/25/03

Janice K. Brewer
Secretary of State

By: Timothy J. Graewald

5 The work embraced by this agreement and the estimated Project costs are as follows: Construction of a multi-use concrete pathway, landscaping, irrigation, pedestrian lighting, three interpretive kiosks, a base for a war memorial monument and a ramada.

THEREFORE, in consideration of the mutual covenants expressed herein, it is agreed as follows:

II. SCOPE OF WORK

1. The State will:

a Prepare plans, specifications and an estimate for the Project and submit them to the Town for concurrence

b After the town concurs with the plans, the Project will be constructed by the State, using State and Federal Funds

c Submit a program containing the aforementioned project to FHWA with the recommendation that it be approved for construction. If such project is approved for construction by FHWA and the funds are available for construction, the Town will and does hereby designate the State as authorized agent for the Town. Agree to be authorized agent for the Town, and with the aid and consent of the Town and the FHWA, will proceed to advertise for, receive and open bids, and subject to the concurrence of the Town and the FHWA, enter into a contract(s) with a contractor(s) on behalf of the Town to whom the award is made for the construction of the project. Such project to be performed, completed, accepted and paid for in accordance with the instructions and requirements of the Town and the Standard Specifications for Road and Bridge Construction of the Arizona Department of Transportation.

c Enter into a Project Agreement with FHWA on behalf of the Town covering the work embraced in said construction contract and will request the maximum federal funds available, including construction engineering and administration costs

d Prepare landscape and sidewalk architectural plans for the landscaping, sidewalk construction, irrigation, lighting and related improvements project and submit them to the Town for concurrence.

e After Town concurrence of the plans, the Project will be constructed by the State, using Town and Federal funds, in an amount estimated at \$488,000 00.

2 The Town will:

a Arrange to have furnished and installed in its name necessary water services from water mains to the designated locations within the right of way. The Town will also provide an electrical point of connection and water hook-ups to the project area.

b Furnish all water for landscape installation during the construction phase, and all water thereafter necessary to properly maintain the landscape, all at the Town's expense

c Provide for, at its own costs and as an annual item in its annual budget, proper maintenance of the Project

d At the conclusion of the contractor maintenance and warranty period, referred to in the construction contract as Landscaping Establishment, maintain the landscaping, pathway, ramada,

interpretive signs and lighting in the same manner as it was designed. Maintenance shall include all testing, adjusting, repairing and operation of the irrigation system, and shall include all electrical power necessary to operate the irrigation system and the pedestrian lighting.

e. Maintain the landscaping, multiple-use pathway, pedestrian lighting, and ramada area. Maintenance shall consist of the care of all landscaping in accordance with accepted horticultural practices, keeping all areas free of weeds, undesirable grasses and litter, applying irrigation water, furnishing and applying insecticide/herbicide sprays and dust to combat diseases and other pests, pruning and replanting as required to maintain the landscaping as it was designed, and established at the completion of the project. The Town will not make any changes, additions or deletions without written approval of the State. All maintenance work shall be conducted in a manner to minimize traffic congestion and interference with through traffic. All traffic control will meet the requirements of the Arizona Department of Transportation's "Uniform Traffic Control Manual."

f. Provide the State with a temporary construction easement for this Project upon completion of any necessary right-of-way acquisition.

g. Allow free public access to the Project improvements during normal business hours.

III. MISCELLANEOUS PROVISIONS

1. This agreement shall become effective upon filing with the Secretary of State.

2. The terms, conditions and provisions of this agreement shall remain in full force and effect for a period of five (5) years from the effective date, unless this Agreement violates any Arizona law, rule or regulation, either now enacted or which may be enacted in the future. This agreement will be automatically renewed for successive periods of five (5) years unless either party shall give notice in writing to the other not less than one (1) month nor more than three (3) months prior to the initial or renewed expiration date. Further, this agreement may be terminated by the State at any time upon sixty (60) days written notice. It is understood and agreed that, in the event this agreement is terminated by the Town, the State shall in no way be obligated to maintain said landscaping.

3. This agreement may be cancelled in accordance with Arizona Revised Statutes Section 38-511.

4. The provisions of Arizona Revised Statutes Section 35-214 are applicable to this contract.

5. In the event of any controversy which may arise out of this agreement, the parties hereby agree to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes Section 12-1518.

6. All notices or demands upon any party to this agreement shall be in writing and shall be delivered in person or sent by mail addressed as follows:

Arizona Department of Transportation
Joint Project Administration
205 South 17th Avenue, Mail Drop 616E
Phoenix, AZ 85007

Town of Kearny
Town Manager
P.O. Box 639
Kearny, AZ 85237

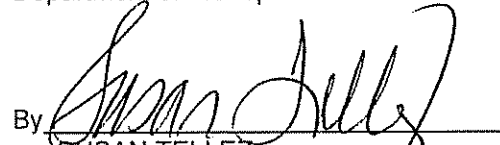
7. Attached hereto is the written determination of each party's legal counsel the parties are authorized under the laws of this state to enter into this agreement and that the agreement is in proper form

IN WITNESS WHEREOF, the parties have executed this agreement the day and year first above written.

TOWN OF KEARNY

By 
DEBRA SOMMERS
Mayor

STATE OF ARIZONA
Department of Transportation

By 
SUSAN TELLEZ
Contract Administrator

ATTEST

By 
MARGARET GASTON
City Clerk

RESOLUTION NO. 03-510

**A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE
TOWN OF KEARNY, ARIZONA, AUTHORIZING AN
INTERGOVERNMENTAL AGREEMENT WITH THE
STATE OF ARIZONA TO IMPLEMENT THE KEARNY
RAIL AND COPPER PARK LANDSCAPE ENHANCEMENT.**

WHEREAS, the Town of Kearny is empowered by Arizona Revised Statutes to enter into an intergovernmental agreement; and

WHEREAS, the Arizona Department of Transportation established the landscape enhancement grant program; and

WHEREAS, the Town of Kearny has authorized the Kearny Rail and Copper Park landscape enhancements.

NOW, THEREFORE, BE IT RESOLVED, by the Mayor and Town Council, of the Town of Kearny, Arizona, that:

Section 1: The Mayor and Town Manager acting on behalf of the Town of Kearny are hereby authorized to negotiate, enter into, execute and deliver the intergovernmental agreement with the Arizona Department of Transportation implementing the Kearny Rail & Copper Park landscape enhancements.

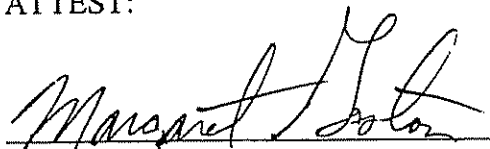
Section 2: The resolution shall take effect immediately upon its adoption and approval.

PASSED AND ADOPTED BY THE Mayor and Town Council of the Town of Kearny, Arizona, this 9th day of June, 2003.

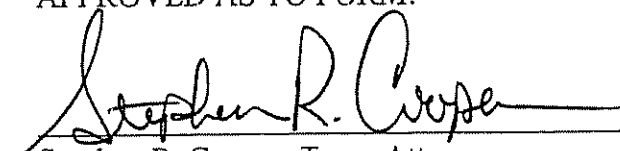


Debra Sommers, Mayor

ATTEST:

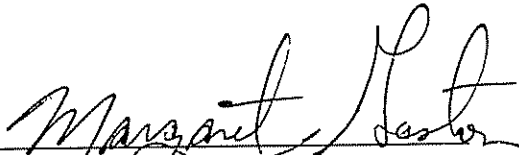

Margaret Gaston, Town Clerk

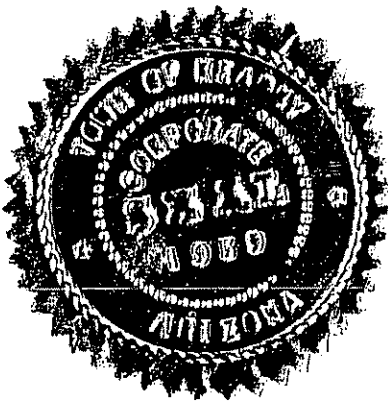
APPROVED AS TO FORM:


Stephen R. Cooper, Town Attorney

I, the undersigned, Margaret Gaston, being the duly appointed and qualified Town Clerk of the Town of Kearny, Arizona, certify that the foregoing Resolution No. 03- 510 is a true, correct and accurate copy of Resolution No. 03-510, passed and adopted at a regular meeting of the Kearny Town Council, held on June 9, 2003, at which a quorum was present and voted in favor of said Resolution.

Given under my hand and seal this 10th day of June 2003.


Margaret Gaston, Town Clerk



JPA 02-052

APPROVAL OF THE TOWN OF KEARNY ATTORNEY

I have reviewed the above referenced proposed intergovernmental agreement, between the DEPARTMENT OF TRANSPORTATION, INTERMODAL TRANSPORTATION DIVISION and the TOWN OF KEARNY, and declare this agreement to be in proper form and within the powers and authority granted to the Town under the laws of the State of Arizona.

DATED this 12th day of May 2003

Stephen R. Cope
Town Attorney



OFFICE OF THE ATTORNEY GENERAL
STATE OF ARIZONA

TERRY GODDARD
ATTORNEY GENERAL

CIVIL DIVISION
TRANSPORTATION SECTION
WRITER'S DIRECT LINE 602.542.8855

INTERGOVERNMENTAL AGREEMENT
DETERMINATION

A.G. Contract No. KR03-0145TRN (JPA 02-52), an Agreement between public agencies, has been reviewed pursuant to A.R.S. § 11-952, as amended, by the Undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining Parties, other than the State or its agencies, to enter into said Agreement.

DATED June 17, 2003.

TERRY GODDARD
Attorney General

A handwritten signature in cursive script, reading "Susan Davis", written over a horizontal line.

SUSAN E. DAVIS
Assistant Attorney General
Transportation Section

/ss

att.



**ATTORNEY GENERAL
CIVIL DIVISION
TRANSPORTATION SECTION**

MEMORANDUM

Susan E. Davis
Assistant Attorney General

Direct: (602) 542-8855
Fax: (602) 542-3646

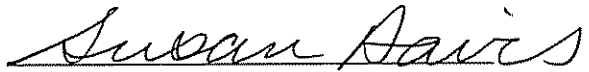
TO: Lisa Yahraus
Joint Project Coordinator
ADOT (616E)

FROM: Susan E. Davis
Assistant Attorney General

DATE: January 22, 2003

**RE: IGA Between The State of Arizona and
The Town of Kearny**
AG Contract No.: KR03-0145TRN
ADOT ECS File: JPA 02-52
Project: TEA-177-A-(001)A
TRACS: 177 PN 146 H5867 01C
Section: SR 177 Kearny Rail & Copper Park

This agreement appears to be in proper form and may be circulated for signature.


SUSAN E. DAVIS
Assistant Attorney General

/ss